E2

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

MAY 08 2003

FIL[redacted] Office: Dallas Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. § 1452(a)

ON BEHALF OF APPLICANT: Self-represented

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Mexico on March 11, 1928. The applicant's father, [redacted] was born in Mexico and never had a claim to U.S. citizenship. The applicant's mother, [redacted] was born in the United States in September 1898. The record fails to contain evidence that the applicant's parents ever married each other. However, a birth certificate issued in May 1978 and submitted in a prior proceeding indicates that he was a legitimate child at birth and his parents were married. The 1978 certificate fails to indicate the parent's residence. His present birth certificate issued in November 1997 indicates that his parents were married and their residence was in San Antonio, Ojinaga, Mexico. The applicant seeks a certificate of citizenship under section 301(h) of the Immigration and Nationality Act, 8 U.S.C. § 1401(h).

Section 301 of Title III of the Act contemplates the person involved being legitimate at birth.

The district director determined that the record failed to establish that the applicant's United States citizen parent was physically present in the United States or its outlying possessions for the requisite period of time. The district director then denied the application accordingly.

The applicant submits the appeal without comment. The applicant indicates in his statement in support of the application that it is impossible for him to get the necessary information to verify that his mother resided in the United States. The applicant indicates that his mother had made a trip to Mexico to visit the applicant's grandmother when she gave birth to him. He states that his father died in 1936 when the applicant was 8 years old and there were seven siblings in the family. He states that his mother then sent him to Mexico to live with his grandmother so he could work as a sheepherder and help her out. The applicant indicates that he remained in Mexico until 1943 when he returned to the United States. The applicant asserts that he worked as a migrant farm worker and his mother died in 1975 in Hereford, Texas.

Section 301 of the Act was amended by subsection (a)(2) of section 101 of the Immigration and Nationality Technical Corrections Act of 1994 (the INTCA) (P.L. 103-416, 108 Stat. 4306, October 25, 1994), and provides that:

> The following shall be nationals and citizens of the United States at birth:
>
> > (h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the

birth of such person, had resided in the United States.

INCTA also states that the amendments to the immigration and nationality laws of the United States shall be applied retroactively as though the amendments had been in effect as of the date of their birth.

Before the Nationality Act of 1940 (NA 1940), there was no definition of the term "residence" and no specification as to its nature or duration. The administrative authorities read the statute generously, and ruled that a temporary abode in the United States by the citizen parent or parents was sufficient compliance, even though such abode was concededly a temporary visit. It is the settled administrative policy that the prior residence requirement is satisfied for persons born prior to January 13, 1941, effective date of NA 1940, if the citizen parent or parents had a temporary sojourn in the United States prior to the child's birth. *Matter of V--*, 6 I&N Dec. 1 (A.G. 1954), held that two visits to the United States by a United States citizen parent prior to the birth of her children, one for 2 days and the other for a few hours, are held to satisfy the residence requirement. Accordingly, prior to January 13, 1941, any temporary physical presence of the citizen parent in the United States, even as a minor, or as an alien, or while exclusion proceedings were pending, which preceded the birth of the child, other than a mere transit presence of a few hours, satisfied the residence requirement.

A review of the mother's birth certificate reveals that she was born in Valentine, Texas, on September 6, 1898, to parents who were both citizens of the United States. Following *Matter of V--* it is concluded that the birth of the applicant's mother, [redacted] in the United States in 1898 to two U.S. citizen parents was other than a mere transit and satisfies the residence requirement of section 301(h) of the Act when the applicant was born abroad in 1928.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence.

The applicant has met this burden of establishing that his mother resided in the United States prior to his birth in 1928 as that term was used prior to the Nationality Act of 1940. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.